

**DEFENDANT'S MOTION TO EXCLUDE
PLAINTIFF'S EXPERTS**

EXHIBIT 6: Deposition of Roland Brown

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NUMBER: 2:05CV194-T

ORIGINAL

HAZEL M. ROBY, as Administratrix of the
Estate of RONALD TYRONE ROBY, Deceased,
Plaintiff,

vs.

BENTON EXPRESS, INC., et al.,
Defendants.

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by
and between the parties through their
respective counsel, that the deposition
of ROLAND BROWN may be taken before
Leslie K. Hartsfield, at the offices of
Beasley, Allen, Crow, Methvin, Portis &
Miles, P.C., 218 Commerce Street,
Montgomery, Alabama, 36103,

1 Lines. But I've pointed out some of the
2 advantages to Central Alabama Transport
3 and -- which is the trucking division of
4 Coral Industries. And they are
5 seriously considering it and I have
6 strongly recommended it to them.

7 Q. But as of right now, Coral
8 does not have it?

9 A. Well, I don't -- I don't
10 think they've done it yet. I think they
11 are -- they are waiting to get the
12 figures back from me. It would be
13 Central Alabama Transport, not Coral.
14 Because Coral is not an over-the-road
15 operation. Central Alabama Transport
16 is. Central Alabama Transport is the
17 transportation division of Coral
18 Industries.

19 Q. As I understand your
20 opinions in this case, you believe
21 Benton Express should have had Qualcomm
22 or something similar, GPS?

23 A. Well, yes. I think they

1 should have -- should have had some type
2 of a tracking system, GPS. Simply
3 because they advertise that they have
4 the latest in technology. On their web
5 page, they present to their customers
6 and potential customers that they have
7 the latest in technology and certainly
8 global positioning systems are the
9 latest in technology. And plus the fact
10 that if they're not going to have that
11 they certainly need some tracking system
12 and they need to have a plan, not only a
13 plan, they need to have a procedure and
14 they need to enforce a procedure for
15 tracking.

16 Q. I'm just talking about GPS
17 alone at the moment. Is it your opinion
18 that it is the industry standard now to
19 have GPS in trucks?

20 A. I -- I would say yes, that
21 it's getting to be. It may not be
22 totally the industry standard but it's
23 getting closer to it and there's

1 certainly a lot of indication that it is
2 getting to be the trucking -- the
3 industry standard, yes.

4 Q. So you would believe that
5 Benton Express is in violation of that
6 industry standard by not having it?

7 A. That or -- or some other
8 system. Some type of tracking system,
9 yes.

10 Q. So anyone who doesn't have
11 it such as your other client, Coral
12 Industries, would be in violation of the
13 industry standard by not having GPS in
14 their trucks?

15 A. Well, I think it depends --
16 depends on the size of the fleet, the
17 operation they carry on, what kind of
18 safety procedures they have in place and
19 are exercising. But yeah, I told Coral
20 I think they're in violation of a safety
21 tool that is -- that is vitally
22 important to the safe operation of
23 their -- of their Central Alabama

1 experience as to what type of operation
2 the company has as to whether or not
3 they use Qualcomm?

4 A. No, I don't think it matters
5 the type of operation they have. I
6 think it matters in the -- in today's
7 economy and in today's world of events
8 and with the height of recognition of
9 terrorism and hijackings, this type
10 thing, and Benton certainly has
11 recognized these are -- are threats.
12 I -- I think the type operation you have
13 the -- I don't think it necessarily
14 relates to the type of operation. I
15 think it relates to your emphasis on
16 trying to -- to know where your trucks
17 are. Certainly if you're going to
18 advertise and you're going to promote to
19 your customer base that you have the
20 latest in technology, then I think you
21 need to have the latest in technology
22 and I think GPS falls into that
23 category.

1 hours.

2 Q. You think -- it's your
3 testimony that there is a business need
4 for Benton Express to be able to tell
5 their customers where between Atlanta
6 and Pensacola their shipment is
7 precisely rather than it's somewhere in
8 between.

9 MR. BOONE: Object to the
10 form. And I think testimony by
11 corporate representative --

12 MR. ROSS: Well, LaBarron,
13 that's an objection to the form and then
14 some speaking objection that follows it
15 which I don't want him to take any clue
16 from. You know where I'm coming from
17 there.

18 MR. BOONE: (Nodded head
19 affirmatively.)

20 A. I think it has a direct
21 relationship to Benton's own
22 publications where they can say --

23 Q. I'm not talking about that.

1 had no way of tracking it and that could
2 happen in any situation. Plus the fact,
3 it's important to them because they have
4 advertised and they have committed
5 themselves to having the latest in
6 technology to be able to satisfy their
7 customers' needs.

8 Q. Right.

9 A. And they have also --
10 management has publicized and put into a
11 publication that they can immediately be
12 able to track a shipment. And how can
13 they immediately track a shipment?

14 Q. You can call your driver on
15 a cell phone, can't you?

16 MR. BOONE: Object to the
17 form.

18 Q. And ask them -- you could do
19 that and ask them where they are if they
20 answer the phone?

21 MR. BOONE: Object to the
22 form.

23 A. If you furnish them cell

1 phones, yeah. If you as a company
2 supply them with a cell phone and
3 require them to keep that cell phone on,
4 yes, you could do that. That's the
5 reason I said there are other tracking
6 systems available other than GPS. But
7 Benton didn't require their drivers to
8 have a cell phone. They didn't provide
9 them with a cell phone and this
10 particular driver had a cell phone and
11 they didn't even have his telephone
12 number so how could they have checked up
13 on him.

14 Q. You've read the testimony.
15 There's evidence of repeated efforts to
16 contact Mr. Stephens on his cell phone;
17 correct?

18 A. No, sir.

19 Q. You don't remember reading
20 that?

21 A. No, sir. It was -- they
22 were trying to get him on his Nextel,
23 which once the battery was dead, they

1 to drop off. I usually do it -- try to
2 do it about every six months as far as
3 dropping cases off. Because I -- what I
4 do is literally do that. That's the
5 reason I don't have a seven year list
6 because I don't keep a -- I don't keep
7 the old file and establish a new file.

8 Q. From this point on maybe all
9 the way through the remainder of the
10 deposition I would like to talk about
11 your disclosures. So if you have a
12 copy -- you have a copy of that which
13 we've marked as Defendants' Exhibit 5
14 already. Look at certain components of
15 it. For instance, on the second page
16 you make the statement there that or the
17 statement is made I stay currently
18 informed on all motor fleet industry
19 safety regulations and industry
20 standards as well as DOT and state
21 regulatory agency regulations. We
22 discussed TRANSPORT TOPICS. Are there
23 other sources of information which you

1 use to stay informed on industry safety
2 regulations and standards?

3 A. Yes, sir.

4 Q. What other sources do you
5 have?

6 A. Well, I get -- I subscribe
7 to the J. J. Keller Internet update. I
8 think they call it -- I can't remember
9 what they call it. Something clicks.
10 Safety Clicks or something of that
11 nature. But I get that almost weekly
12 and in some cases more often than that.

13 I subscribe to J. J.
14 Keller's update printed material that
15 they offer. J. J. Keller is an
16 industry-recognized leader in the
17 publication of regulatory information.
18 As a matter of fact, for many years, the
19 American Trucking Association offered
20 that service and then several years ago
21 they chose to get out of the publication
22 business as far as that was concerned.
23 And they turned all of that

1 responsibility over to and assigned it
2 to J. J. Keller and Associates.

3 I get -- I get safety
4 bulletins from the Alabama Trucking
5 Association from the -- from the --
6 several trucking associations put out
7 newsletters. Virginia Trucking
8 Association puts out a monthly
9 newsletter and a couple of other light
10 and medium truck magazine and some other
11 publications. I can't remember all of
12 them. But it's basically subscription
13 or in some cases are paid or unpaid. Of
14 the ones I mentioned so far, are all
15 paid. But those are the methods I use
16 for staying abreast.

17 Q. Do you read all of these
18 when they come in?

19 A. Not when they first come in.
20 The J. J. Keller Safety Clicks I read
21 them pretty much as they come in. I
22 also print them out and then will go
23 back and review them and I keep them in

1 a file folder in my computer. I keep a
2 J. J. Keller's file folder and I'll go
3 back from time to time and print out
4 everything that's in there and clean it
5 up. But I -- J. J. Keller's and the
6 trucking association's publications I
7 read pretty regularly. TRANSPORT
8 TOPICS, I read that. I won't say as
9 soon as it comes in but it's got to
10 where it comes sporadic. I mean,
11 sometimes you'll get two or three at one
12 time in Florida. I didn't have that
13 problem when I lived in the D.C. area
14 because it was right there. But I stay
15 pretty current on reading them. I don't
16 read every one of them as soon as they
17 come in, but at some point in time, I'll
18 read them.

19 The trucking association
20 ones I read pretty close to the time
21 they come in because they have news
22 about seminars, safety issues, and
23 safety meetings and this type thing and

1 I want to stay abreast of what's going
2 on in those.

3 Q. So you read all these
4 publications maybe not the day they come
5 in, but you stay current on all these
6 publications which I assume probably
7 takes you quite a few hours out of your
8 weekend?

9 A. I'm a work alcoholic.
10 Sometimes 11 or 12 o'clock if I'm not
11 working on a case I'm reading some of
12 those publications.

13 Q. I see. Well, you mentioned
14 that you do that in -- I believe you say
15 in here in order to stay on top --
16 informed of safety regulations and
17 changes. Have there been any
18 significant safety regulation changes
19 this year?

20 A. Well, the -- yes, there have
21 been. They finally reached a decision
22 on the hours of service. It was inacted
23 of January of 2004 but it went into

1 Q. Are there any books or
2 articles or other written materials we
3 could find that you're aware of that say
4 essentially the same thing that you've
5 opined about the need for GPS as a
6 safety device in trucks?

7 A. Not that I can think of
8 right off.

9 Q. Have you submitted your
10 report or any synopsis of your opinions
11 specific to this case to any other
12 experts that you know of in your
13 industry to ask them to review and give
14 you their opinion as to whether they
15 agree or have criticisms of your
16 opinions?

17 A. No, I don't -- I don't
18 normally share opinions with other --
19 with other experts. It's not a practice
20 of mine. And I've never been asked by
21 any other expert to offer any opinions
22 concerning their testimony.

23 Q. So just to make sure I got

1 material in TRANSPORT TOPICS, I will do
2 it.

3 I will also point out to you
4 that you -- I think maybe we both
5 mischaracterized something in this
6 article put out by Liberty Mutual. This
7 does not specifically restrict this to
8 their customers. This says a trucking
9 industry survey. It doesn't say their
10 customers or their clients. This is
11 broader than that. And this supports my
12 position. This talks about best and
13 industry-accepted practices.

14 Q. Okay.

15 A. And it talks about an
16 industry survey they ran and it doesn't
17 restrict it just to their clients, if I
18 read it correctly.

19 Q. But other than this article
20 from Liberty Mutual, can you identify
21 for me as we sit here today any other
22 articles or other publications?

23 A. No. Not as we sit here

1 today, I can't. No, sir.

2 MR. ROSS: I hate to get
3 this, but it wasn't in there among the
4 material we copied; right?

5 MR. BOONE: No, it hadn't
6 been marked, just the folder.

7 MR. ROSS: I meant to --
8 let's mark that now then. We'll mark
9 the Liberty Mutual article as
10 Defendants' Exhibit No. 13. Okay.

11
12 (Defendants' Exhibit No. 13 was
13 marked for identification.)

14
15 Q. In your report you state --
16 well, you quote from J. J. Keller again,
17 I think. I wish these pages were
18 numbered. It would be easier for me to
19 point you to it. See the bold
20 quotations? You there?

21 A. Yes.

22 Q. What's the source of this
23 question and guidance?